

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 26642 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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PUNJABHAI DHULABHAI VANKAR - Petitioner(s)
Versus
MAMLATDAR & 1 - Respondent(s)

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Appearance :

MR ASHUTOSH R BHATT for Petitioner(s) : 1, MR BHARAT J JOSHI for
Petitioner(s) : 1,
MR MAULIK NANAVATI, AGP for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 20/02/2007

ORAL JUDGMENT

1. Rule. Mr. Nanavati, learned AGP, waives notice of rule.

2. With consent of the learned advocates appearing for both the sides, the matter is finally heard today.
3. The short facts of the case are that the action was initiated against the petitioner for unauthorised cutting of the trees under the Saurashtra Felling of Trees (Infliction of Punishment) Act, 1951. Vide order dated 30.03.1997, the Mamlatdar found that the breach is committed and penalty of Rs. 59,000/- was imposed upon the petitioner. The petitioner carried the matter before in Appeal before the Deputy Collector being Appeal No. 4/97, and ultimately, vide order dated 12.05.1997, the Deputy Collector found that the inquiry is not properly held, therefore, the matter was remanded to the Mamlatdar for de novo inquiry and to decide afresh. The Mamlatdar thereafter, held the inquiry and passed the order on 30.10.1998, whereby the breach was found, but he imposed the penalty of Rs. 2,250/- upon the petitioner. The petitioner carried the matter further once again in appeal being Appeal No.12/98, the appeal was dismissed and the order of the Mamlatdar dated 30.10.1998 was confirmed. The petitioner further preferred revision before the State Government against the order in appeal, and in the said revision, the State Government vide order dated 25.09.2000, not only dismissed the appeal but confirmed the order

dated 03.03.1997 passed by the Mamlatdar for imposition of fine of Rs. 59,000/-. It is under these circumstances, the present petition.

4. Heard Mr. Bhatt for the petitioner and Mr. Nanavati for the State Authorities.

5. Upon hearing the learned advocates appearing for both the side, it appears that apparent error on the face of the record is committed by the State Government while exercising the revisional jurisdiction inasmuch as the State Government has lost sight of the fact that the order dated 03.03.1997 passed by the Mamlatdar was no more in existence and it was quashed by the order of the Deputy Collector in Appeal No. 4/97. Not only that, but the Deputy Collector, as per the said order, had directed for de novo inquiry by remanding the case to the Mamlatdar. The order of the Deputy Collector dated 12.05.1997 in Appeal No. 4/97 was not challenged by any party to the proceedings before the higher forum. The said order therefore, had become final. Not only that but, after the order dated 12.05.1997 of the Deputy Collector in Appeal, the Mamlatdar had conducted de novo inquiry and passed an another order dated 30.10.1998 and the appeal was also preferred against the said order dated 30.10.1998, which though was dismissed, in revision, the State Government could examine the legality and validity of the order passed by the

Mamlatdar or passed by the appellate authority.

6. In any event, when the order dated 30.03.1997 was no more in existence since the same was already quashed by the Deputy Collector in the earlier appeal, there was no question of confirming the said order, which was no more in existence. Further, even if the State Government was not inclined to exercise the revisional power and consequently was to dismiss the revision, the jurisdiction of the State Government can be read upto the confirmation of the order in appeal and consequently confirming the order of the Mamlatdar dated 30.10.1998. Therefore, as the order dated 03.03.1997 of the Mamlatdar, which was initially passed and subsequently quashed, was not even subject matter of revision before the State Government, the State Government while dismissing the revision could not confirm the order dated 03.03.1997 of the Mamlatdar and at the most could confirm the order of the Mamlatdar dated 30.10.1998.

7. Under the circumstances, such error on the part of the State Government while exercising the revisional jurisdiction is not only apparent on the face of record but it can also be said that the State Government has exceeded the jurisdiction vested in it by confirming the order dated 03.03.1997 passed by the Mamlatdar, which was in any case beyond the scope of

revision and not the subject matter of revision before the State Government.

8. Mr. Bhatt, learned counsel appearing for the petitioner has declared before the Court that the petitioner has also deposited the amount of Rs. 2,250/- as per the order dated 30.10.1998 passed by the Mamlatdar for imposition of the penalty and the petitioner is not challenging the said order since the revision is dismissed and the present petition is only limited to the exercise of the power by the State Government for confirmation of the order dated 03.03.1997 of the Mamlatdar which was earlier quashed by the Deputy Collector in the earlier appeal.

9. Under the circumstances, there is no further aspect to be examined qua the legality and validity of the order dated 30.10.1998 passed by the Mamlatdar and in any case, the said revision against the order is dismissed and therefore, the order dated 30.10.1998 of the Mamlatdar even otherwise is to operate and further there is no challenge to the same in the present proceedings.

10. In the result, the order of the State Government dated 25.09.2000, so far as it relates to the confirming of the order of the Mamlatdar dated 03.03.1997 is quashed and set aside with the modification that as a consequence of the dismissal of the revision by

the State Government, the order dated 30.10.1998 passed by the Mamlatdar shall continue to remain in operation.

11. Petition is partly allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs.

(JAYANT PATEL, J.)

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